IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6038 OF 2007

Umesh Gajananrao Bhogaonkar..... ....Petitioner
V/s
Chandrashekhar Gajananrao Bhogaonkar & Ors.. .....Respondents.

Mr.A.Y.Sakhare i/by Mr.R.S.Datar, Adv. For the petitioner.

Mr.A.V.Anturkar i/by Mr.S.B.Deshmukh, Adv. For respondent Nos.1/1, 1/2 and 1/3.

CORAM: A.P.DESHPANDE, J.
10/9/07

PC:

An order passed by the II Joint Civil Judge, Senior Division, Kolhapur permitting defendant Nos.3A to 3C to withdraw an amount of Rs.16 lacs is challenged by filing present writ petition. By an order dated 23.6.97 this Court had permitted the applicant in Civil Application No.3343/97 to withdraw 3/4th of the sale proceeds deposited in the trial Court. It is obvious that the applicant was permitted to withdraw 3/4th of the sale proceeds for herself and for and on behalf of the plaintiff and other defendants barring defendant No.3. The remaining 1/4th amount was directed to be invested in a nationalised bank. The 1/4th amount was to be retained and invested in nationalised bank to take care of the share of defendant No.3. The 1/4th amount was Rs.25,25,600/- which came to be invested. Together with the accrued interest now the amount woks out in the sum of Rs.55 lacs. The defendant Nos.3A to 3C applied for permission to withdraw Rs.16 lacs out of Rs.55 lacs by contending that the said sum of Rs.16 lacs includes the medical expenses incurred by them for medical treatment of original defendant No.3-deceased and

marriage expenses incurred by them to perform marriage of defendant No.3C and repayment of loan amount to credit society. The trial Court taking over all view of the matter has permitted withdrawal of Rs.16 lacs by defendants 3A to 3C and has further secured the said payment by directing defendants to file an undertaking so also solvent surety of the like amount. As the payment of Rs.16 lacs would be obviously less than the share of defendant No.3 the objection raised to the said withdrawal has been rightly rejected by the trial Court. Perused the order. Same does not call for any interference. Hence writ petition deserves to be dismissed. At this stage learned senior counsel Shri Sakhare has pointed out that the observations made in this order would weigh with the Judge of the trial Court while deciding Ex.374 which is an application filed by defendants 3A to 3C for recalling of the amount withdrawn under the order dated 23.6.97. As some of the observations made in the impugned order being outside the scope of application for withdrawal of the amount would have bearing while adjudicating the application at Ex.374. In this view of the matter, it is clarified that the trial Court shall proceed to decide the application at Ex.374 uninfluenced by the observations made in the impugned order. With this clarification writ petition is summarily dismissed. The suit is pending for last 17 years and hence I deem it appropriate to direct the trial Court to decide the same as expeditiously as possible preferably within a period of six months from today.

10.9.07